

REMARKS

Upon entry of this Amendment, claims 1-29 are pending in the Application. Claims 1 and 15 have been amended. Claims 24-29 have been added. No claims have been cancelled.

In view of the following remarks, Applicants respectfully submit that all claims should be allowable.

Double Patenting Rejections

Claims 1-23 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claim of U.S. Patent No. D496,531 ("the '531 patent"). This rejection is traversed on the grounds that the claims of the instant Application are patentably distinct from the claims of the '531 patent.

The '531 patent is a design patent that includes a design patent claim that covers ornamental features; the claims in the instant Application cover structural and functional features, which, by definition, are not covered by the design patent. It is submitted that for a double patenting rejection to be proper in the present instance "[t]he Examiner must be able to recreate the design claimed from the utility claims, without any reliance whatsoever on the drawings. M.P.E.P. § 1504.06. The design claimed in the '531 patent clearly includes several features that could not be recreated from the claims of the instant Application (*e.g.*, the flat top, the shape of the lock, *etc.*). Therefore, this rejection is improper and should be withdrawn.

Rejections Under 35 U.S.C. § 102

Claims 1-3 stand rejected under 35 U.S.C. § 102(b) by U.S. Patent No. 4,982,863 to Skillius ("Skillius"). This rejection is respectfully traversed on the grounds that Skillius does not disclose all of the features of the claimed invention.

For example, claim 1 recites, *inter alia*, "a single cover pivotally mounted to one of said side walls for pivotal movement as a whole between an open position in which access to the interior storage compartment is permitted and a closed position in which said single cover covers the interior storage compartment such that access to the interior storage compartment is prevented." Claims 2 and 3, depend from claim 1, and therefore, include the subject matter recited above, among other things.

Skillius does not disclose this feature. Instead, Skillius appears to describe a box (element 1 in FIG. 1) that includes a box body (element 2), two cover halves (elements 8a,

8b), and two handle members (elements 9a, 9b). *See* Skillius at col. 2, lines 34-36; and FIG. 1. Each of the handle members is hinged to one of the two cover halves. *See id.* Each cover half is disposed along one longitudinal edge hinged to the adjacent upper edge of the box body. *See id.* at col. 2, lines 53-58; and FIG. 1. Each of the cover halves pivot along their respective hinged connections to the box body to open the interior of the box. *See id.* at FIG. 1. In other words, Skillius describes using two cover halves that open and close independently from each other to cover and uncover an interior of the box. Therefore, Skillius does not disclose a single cover pivotally mounted to one of said side walls for pivotal movement as a whole between an open position in which access to the interior storage compartment is permitted and a closed position in which said single cover covers the interior storage compartment such that access to the interior storage compartment is prevented. For at least this reason the rejection of claims 1-3 should be withdrawn.

Claims 1-5, 13, and 14 stand rejected under 35 U.S.C. § 102(b) by U.S. Patent No. 6,237,765 to Hagen *et al.* ("Hagen"). This rejection is respectfully traversed on the grounds that Hagen does not disclose all of the features of the claimed invention.

As was discussed above, claim 1 includes the recitation of "a single cover pivotally mounted to one of said side walls for pivotal movement as a whole between an open position in which access to the interior storage compartment is permitted and a closed position in which said single cover covers the interior storage compartment such that access to the interior storage compartment is prevented." Claims 2-5, 13, and 14 depend from claim 1, and therefore, include the subject matter recited above, among other things.

Hagen does not disclose the container as recited in claim 1. As shown in FIG. 1 of Hagen, Hagen discloses a bait bucket that includes an outer container or box (element 10 in FIG. 1) and a selectively removable main lid (element 11). The removable main lid is removed from the box as a unit, and no pivotal connection is provided therebetween. *See* Hagen at FIG. 1. Therefore, Hagen does not disclose a single cover pivotally mounted to one of said side walls for pivotal movement as a whole between an open position in which access to the interior storage compartment is permitted and a closed position in which said single cover covers the interior storage compartment such that access to the interior storage compartment is prevented. For at least this reason, the rejection of claims 1-5, 13, and 14 should be withdrawn.

Rejections Under 35 U.S.C. § 103

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen *et al.* in view of allegedly admitted prior art. This rejection is traversed on the grounds that Hagen and the knowledge generally available to one of ordinary skill in the art do not teach or suggest all of the features of the claimed invention.

The Examiner alleges that Applicants have admitted that it is well known to make handles of both plastic and metal. This is incorrect, Applicants have made no such admission. Further, the claim does not simply recite a handle of a particular composition, instead the claims a container including the combination of a “handle portion [] constructed of metal and the cover locking mechanism [] constructed of plastic.” Applicants hereby assert that such a combination, in conjunction with the rest of the features included in claim 12, is not well known within the art. Further, claim 12 depends from claim 1, and therefore the rejection based on Hagen should be withdrawn at least because of the deficiency of Hagen outlined above.

Newly Added Claims

Claims 24-29 have been newly added by this Amendment.

Claims 24 and 25 depend from claim 1, and therefore, are allowable over the cited references at least for the reasons discussed above, as well as for the features that they add to claim 1.

Claim 26 includes, among other things, the features of a cover pivotally pivotally mounted to a base for pivotal movement between an open position and a closed position; and a pair of lock portions being disposed exteriorly to an interior storage compartment. As was set forth previously, Hagen and Skillius do not disclose these features. Accordingly, claim 26 is allowable over the cited references.

Claims 27-29 depend from claim 26, and therefore, are allowable over the cited references based on their dependency, as well as for the features that they add to claim 26.

Conclusion

All rejections have been addressed. It is respectfully submitted that the present application is now in condition for allowance, and a notice to that effect is earnestly solicited.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Should there be any questions or concerns regarding this application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP



JACK S. BARUFKA

Reg. No. 37,087

Tel. No. (703) 770-7712

Fax No. (703) 770-7901

JSB/DBE
P.O. Box 10500
McLean, VA 22102
(703) 770-7900